

Appl. No. 10/726,432
Amdt. dated August 3, 2006
Reply to Office action of May 9, 2006

REMARKS

Applicants have received the Office action dated May 9, 2006, in which the Examiner: 1) objected to the drawings; 2) rejected claims 1-5 and 12-17 as allegedly indefinite; and 3) rejected claims 1-20 as allegedly anticipated by Hammond (U.S. Pub. No. 2002/0082977, hereinafter "Hammond").

With this Response, Applicants amend claims 3-4, 8-9, 13 and 15-17, and cancel claims 1-2, 6-7, 12, 14 and 18-19.

I. OBJECTIONS TO THE DRAWINGS

The Office action objects to the drawings because, allegedly, "the figures are numbered in incorrect order." Applicants respectfully traverse. The code of federal regulations, in particular 37 CFR 1.84(u) addresses numbering of the views in the drawings, and states

The different views must be numbered, starting with 1, independent of the numbering of the sheets and, **if possible**, in the order in which they appear on the drawing sheet(s).

(37 CFR 1.84(u) (emphasis added)). Thus, while the CFR does not absolutely require that the various views be shown in the drawing sheets in order. For this reason, Applicants respectfully submit that the objection to the drawings is without basis, and should be withdrawn.

II. SECTION 112 REJECTIONS

The Office action rejects claims 1-5 and 12-17 under Section 112, second paragraph. Claims 1-2, 12 and 14 have been cancelled, thus mooted the rejections. Independent claim 3, and claims 4-5 which depend from claim 3, recite "A method comprising" and "The method comprising" respectively. Thus claims 3-5 are clearly directed to methods do not recite multiple statutory classes.

Independent claim 13, and claims 15-17 which depend from claim 13, recite "A computer readable media" and "The computer readable media" respectively. Thus, claims 13 and 15-17 are clearly directed to structure (computer readable media) and do not recite multiple statutory classes.

For these reasons, the Section 112 rejections of the Office action are improper, and should be withdrawn.

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III. ART-BASED REJECTIONS

A. Claim 3

Claim 3 stands rejected as allegedly anticipated by Hammond. Applicants amend claim 3 to be in independent form including most, but not all, the limitations of claims 1 and 2, from which claim 3 previously depended. It is noted that claim 3 already contained these limitations by virtue of its previous dependency.

Hammond is directed to aggregation of on-line auction listing and market data for use to increase likely revenues from auction listings. (Hammond Title). In particular, the portion of Hammond cited by the Office action in rejecting claim 3 is directed to demand bid location. (Hammond Paragraph [0123]). The item to be auctioned is listed on multiple auction services, and the various auctions are monitored. (Hammond Paragraph [0124]).

As the auctions progress, the item is delisted (the auction listing for the item is cancelled) from auctions with inferior performance before the auction closes.

(*Id.*). When determining which auction to delist, each **auction** is ranked or scored based on factors such as bid price, number of bids, frequency of bidding, and the like. (Hammond Paragraphs [0128]-[0135]).

Claim 3, by contrast, specifically recites, "predicting, by a software program executing on the computer system, an auction outcome for each of a plurality of potential feedback rules for the online auction by ranking ... each of the plurality of potential feedback rules based on the predicted outcomes... ." The various sections of Hammond relied upon by the Office action (*i.e.*, paragraphs 14, and 128-136) are directed to a demand bid locator, and deal with selecting from which auctions to delist an item. Applicants respectfully submit that the cited sections, and Hammond in general, fails to expressly or inherently teach "ranking ... each of the plurality of potential feedback rules based on the predicted outcomes."

Based on the foregoing, Applicants respectfully submit that claim 3, and all claims which depend from claim 3 (claims 4 and 5), should be allowed.

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Applicants amend claim 4 to depend from claim 5 given the cancellation of claims 1 and 2, and not to define over any cited art.

B. Claim 8

Claim 8 stands rejected as allegedly anticipated by Hammond. Applicants amend claim 8 to be in independent form including the limitations of claim 6 from which claim 8 previously depended. It is noted that claim 8 already contained these limitations by virtue of its previous dependency.

In the Hammond system, it appears that the auction data and analysis of auction data is provided to the auction seller 130 from the auction data processing system 114. (Hammond Paragraph [0022]; Figure 1). Thus, whether the auction seller 130 is an independent entity from the auction data processing system 114, or the auction seller 130 is operated by the same entity (Hammond Paragraph [0023]), it is the auction seller 130 that makes the decisions as to the various auction parameters, such as feedback rule.

Claim 8, by contrast, specifically recites, "wherein the processor, executing the auction program, selects one of the plurality of feedback rules to implement based on the predicted auction outcomes." In rejecting this claim, the Office action merely refers to the rejection of claims 1-5; however, claims 1-5 do not expressly address the situation where the auction program picks the feedback rule. Moreover, and as discussed immediately above, the decisions regarding auction parameters in Hammond appears to be left to the auction seller 130, not the auction data processing system 114. Thus, Hammond fails to expressly or inherently teach "**wherein the processor, executing the auction program, selects one of the plurality of feedback rules to implement based on the predicted auction outcomes.**"

Based on the foregoing, Applicants respectfully submit that claim 8, and all claims which depend from claim 8 (claims 9-11), should be allowed. Applicants amend claim 9 to reflect the cancellation of claim 8, and not to define over any cited art.

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C. Claim 13

Claim 13 stands rejected as allegedly anticipated by Hammond. Applicants amend claim 13 to be in independent form including the limitations of claim 12 from which claim 13 previously depended. It is noted that claim 13 already contained these limitations by virtue of its previous dependency.

In the Hammond system, it appears that the auction data and analysis of auction data is provided to the auction seller 130 from the auction data processing system 114. (Hammond Paragraph [0022], Figure 1). Thus, whether the auction seller 130 is an independent entity from the auction data processing system 114, or the auction seller 130 is operated by the same entity (Hammond Paragraph [0023]), it is the auction seller 130 that makes the decisions as to the various auction parameters, such as feedback rule.

Claim 13, by contrast, specifically recites, "holding an online auction based on the parameters of the online auction and using one of the plurality of feedback rules selected based on the modeling and selected by the instructions executed by the computer program based on the modeling." In rejecting this claim, the Office action relies on the Hammond's Abstract and Figure 1; however, the decisions regarding auction parameters in Hammond appears to be left to the auction seller 130, not the auction data processing system 114, as shown in Hammond's Figure 1. Thus, Hammond fails to expressly or inherently teach "holding an online auction based on the parameters of the online auction and using one of the plurality of feedback rules selected based on the modeling **and selected by the instructions executed by the computer program based on the modeling.**"

Based on the foregoing, Applicants respectfully submit that claim 13, and all claims which depend from claim 13 (claims 15-17), should be allowed. Applicants amend claims 15-17 to reflect the cancellation of claim 12, and not to define over any cited art.

D. Claim 20

Claim 20 stands rejected as allegedly anticipated by Hammond. Applicants amend claim 20 to be in independent form including the limitations of

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claims 19 from which claim 20 previously depended. It is noted that claim 20 already contained these limitations by virtue of its previous dependency.

In the Hammond system, it appears that the auction data and analysis of auction data is provided to the auction seller 130 from the auction data processing system 114. (Hammond Paragraph [0022], Figure 1). Thus, whether the auction seller 130 is an independent entity from the auction data processing system 114, or the auction seller 130 is operated by the same entity (Hammond Paragraph [0023]), it is the auction seller 130 that makes the decisions as to the various auction parameters, such as feedback rule.

Claim 20, by contrast, specifically recites, "wherein the means for reading and executing programs executes the auction program stored on the means for storing, predicts an auction outcome for each of a plurality of potential feedback rules, and selects one of the plurality of feedback rules to implement based on the predicted auction outcomes." In rejecting this claim, the Office action merely refers to the rejection of claims 1-5; however, claims 1-5 do not expressly address the situation where the auction program picks the feedback rule. Moreover, the decision regarding auction parameters in Hammond appears to be left to the auction seller 130, not the auction data processing system 114. Thus, Hammond fails to expressly or inherently teach "wherein the means for reading and executing programs executes the auction program stored on the means for storing, predicts an auction outcome for each of a plurality of potential feedback rules, **and selects one of the plurality of feedback rules to implement based on the predicted auction outcomes.**"

Based on the foregoing, Applicants respectfully submit that claim 20 should be allowed.

IV. CLAIM CANCELLATIONS

With this Response, Applicants cancel claims 1-2, 6-7, 12, 14 and 18-19 without prejudice to later asserting those claims, such as in a continuation application.

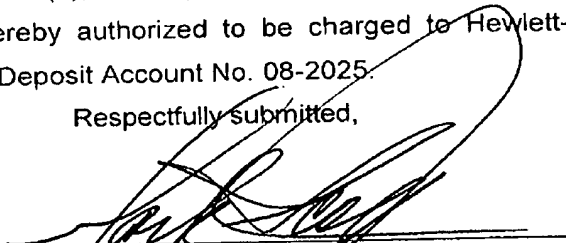
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V. CONCLUSION

In the course of the foregoing discussions, Applicants may have at times referred to claim limitations in shorthand fashion, or may have focused on a particular claim element. This discussion should not be interpreted to mean that the other limitations can be ignored or dismissed. The claims must be viewed as a whole, and each limitation of the claims must be considered when determining the patentability of the claims. Moreover, it should be understood that there may be other distinctions between the claims and the cited art which have yet to be raised, but which may be raised in the future.

Applicants respectfully request reconsideration and that a timely Notice of Allowance be issued in this case. It is believed that no extensions of time or fees are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR 1.136(a), and any fees required (including fees for net addition of claims) are hereby authorized to be charged to Hewlett-Packard Development Company's Deposit Account No. 08-2025.

Respectfully submitted,



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